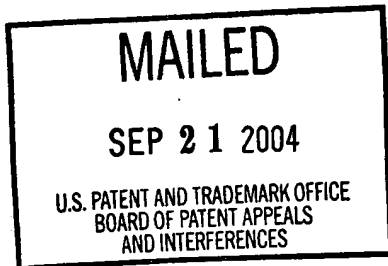


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte GEORG SIEGL

Appeal No. 2004-1924
Application No. 09/700,258

ON BRIEF

Before FRANKFORT, STAAB and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 18, 19, 21 and 22. Claims 20 and 23-35, the only other claims pending in this application, stand objected to as depending from a rejected claim but are otherwise indicated as allowable.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to a presentation device comprising a base 5, a stand 2 plugged into the base including bars 3 connected by transverse struts 4 plugged to the bars 3 using T-shaped pieces 36 and transverse bars 9, 10 connecting the upper and lower ends of the bars for insertion into upper and lower wrapped-around edges 7, 8 of a presentation carrier 6. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The examiner relied upon the following prior art references of record in rejecting the appealed claims:

Künstler (German patent document)	DE 9,301,769	May 13, 1993
Chanteur (French patent document)	2,754,929	Apr. 24, 1998 ¹

The following rejection is before us for review.

Claims 18, 19, 21 and 22² stand rejected under 35 U.S.C. § 103 as being unpatentable over Künstler in view of Chanteur.

¹ We derive our understanding of these references from the English language translations obtained by the United States Patent and Trademark Office (USPTO), copies of which are appended hereto.

² The examiner's inclusion of claim 20 in the statement of the rejection in the final rejection (Paper No. 8, page 3) and answer (page 3) appears to be in error, in light of the examiner's indication of allowable subject matter in claim 20 on page 4 of the final rejection.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 19) for the examiner's complete reasoning in support of the rejections and to the brief (Paper No. 18) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Künstler discloses a display device comprising a base made up of side members 4 and rods 5, with a welded-on tube 7 on each side member for receiving rods 1, the rods 1 being tensioned by cables 2 attached at the bottom to the side members 4 via S-shaped hooks 12, eyelets 14 and oval clamps 13 and at the top to holes 17 in rods 1 via fastening screws 15 and adjustment screws 16. A cross bar 3 connects the two rods 1 as shown in Figure 5 and a display panel 6 is fastened to the cables 2 as shown in Figure 6.

The examiner recognizes that Künstler lacks at least two transverse struts plugged to and connecting the uprights (rods 1) together to form a double-H shape and the two uprights being formed of flexible bars plugged together, as called for in claim 18. The examiner contends that it would have been obvious to provide Künstler's display device with at least another transverse strut, as a mere duplication of the cross bar 3, to

provide additional stability and strength to the presentation device (answer, page 4 and page 5). As for the two uprights being formed of flexible bars plugged together, it is the examiner's position that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to modify Künstler's device by making the uprights (rods 1) out of several flexible bars as taught by Chanteur to allow the device to be broken down into a smaller bundle for easier storage (answer, page 4).

Appellant argues that the modifications proposed by the examiner would not have been obvious because (1) Chanteur's one dimensional stem structure is highly unstable and that, accordingly, a person skilled in the art seeking to reinforce the stability of the Künstler device would not have looked to the teachings of Chanteur, (2) Chanteur actually teaches away from the present invention by teaching the use of a cord 30 to enhance the connection of tubes 23, 24, 25 to each other and the strut and (3) there is no teaching in either of the references of the formation of a double-H shape by the use of at least two transverse struts plugged to the flexible bars of the upright (brief, page 5). For the reasons which follow, we do not find these arguments persuasive.

As to the first argument, the examiner has not proposed modification of the Künstler device to provide a one dimensional stem structure. Chanteur teaches a construction of the upright stem structure comprising three flexible tubes 23, 24, 25 fitting together with the help of sleeves 26, 27 and held together by an elastic cord 30 passing through the tubes and sleeves, wherein the tube 25 can be extracted from the

sleeve 27 and lowered against the tube 24 and tube 24 can be extracted from the sleeve 26 and the tubes 24 and 25 lowered against the tube 23 (translation, page 9) for compact storage and transport. One of ordinary skill in the art would have appreciated the advantages of such an assembly for use in constructing the uprights of Künstler's device to enable compact storage and transport thereof without completely disassembling the components of the stem.

As to the specific question of "teaching away," our reviewing court in In re Gurley, 27 F.3d 551, 553, 31 USPQ2d 1130, 1331 (Fed. Cir. 1994) stated:

A reference may be said to teach away when a person of ordinary skill, upon [examining] the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.

We find nothing in Chanteur's teaching of providing a cord 30 to hold the stem components together which would have discouraged one of ordinary skill in the art from forming each of the rods 1 of Künstler from flexible bars plugged together via tubes and held together via cords passing through the tubes and sleeves. The provision of such a construction for Künstler's rods would offer the advantage of compact storage and portability without full disassembly taught by Chanteur.

As to the third argument, Künstler discloses connection of a crossbar 3 to the two rods 1 via an adjustment screw 19, an adjustment ring 18 and threaded pins 20 and cap nuts 21. We consider this to be a "plugged together" connection. Furthermore, the examiner's position, that it would have been obvious to one of ordinary skill in the art

merely to provide a second such crossmember to further stabilize the device, especially in a case where long rods 1 are used for a particularly high device,³ appears reasonable to us and has not specifically been challenged by appellant.

Claim 19 depends from claim 18 and further recites "T-shaped plug connectors each for connecting an end portion of one of the transverse struts to respective end portions of two of the flexible bars." According to the examiner, "[j]oining the flexible bars [Künstler's rods 1, as modified as proposed by the examiner,] one to another using a T-shaped plug as taught by Chanteur would also have been obvious to one of ordinary skill in order that one connector allow both connections of the individual flexible bars to form uprights as well as attachment of the transverse struts to the uprights."

While Chanteur does disclose T-shaped connectors (T-shaped angle irons 5' and 21') for connecting the stem 22 to the upper rigidification rod 4 and to the crossbrace 29, Chanteur teaches connecting the tubes 23, 24, 25 with sleeves 26, 27. Chanteur provides no teaching or suggestion to connect tubes, bars or rods together, much less two flexible bars of each upright, end-to-end⁴ using T-shaped plug connectors, as called for in claim 19. The mere fact that Künstler could be modified to use T-shaped connectors to connect the transverse struts to the uprights would not have made the modification obvious unless the prior art suggested the desirability of the modification.

³ Note that Künstler teaches on page 2 of the translation that the "entire device may be made in different heights."

⁴ Note that each of the T-shaped angle irons 5', 28' and 21' has a rigidification rod 4, tube 23 or crosspiece 12 passing through two ends thereof and that none has two rods or tubes received therein end-to-end.

See In re Mills, 916 F.2d 680, 682, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990); In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Thus, we shall not sustain the rejection of claim 19.

Dependent claims 21 and 22 each require that the base comprise an elongate crossmember having two receptacles into each of which a lower end portion of a lowermost flexible bar of each of the uprights is plugged. The examiner's statement on page 4 of the answer that Künstler's base comprises "an elongate cross member (5) that also has two receptacles (7) for insertion of the lower end portions of the uprights (4)"⁵ is in error. The rods 5 of Künstler's base do not, as the examiner asserts, comprise the tubes 7 for receiving the rods 1. Rather, each of the side members 4 comprises one of the tubes 7. The rejection of claims 21 and 22 under 35 U.S.C. § 103 is grounded in part on the examiner's finding that Künstler discloses a base comprising a crossmember having two receptacles into which the lower end portions of the lowermost flexible bars of each of the uprights is plugged. The above discussed lack of support in Künstler for this finding fatally taints the examiner's conclusion that the differences between the subject matter recited in claims 21 and 22 and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. It follows that we cannot sustain the rejection.

⁵ We presume that the examiner intended to refer to the rods 1 as the uprights.


CONCLUSION

To summarize, the decision of the examiner to reject claims 18, 19, 21 and 22 under 35 U.S.C. § 103 is sustained as to claim 18 and reversed as to claims 19, 21 and 22. The examiner's decision is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART


CHARLES E. FRANKFORT
Administrative Patent Judge


LAWRENCE J. STAAB
Administrative Patent Judge


JENNIFER D. BAHR
Administrative Patent Judge

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